in the

Supreme Court

of the

United States

OCTOBER TERM 1977

CASE NO. 77-363

CITY OF MIAMI BEACH,
a municipal corporation

Petitioner

vs.

BERNARD JACOBS, d/b/a THE PARK APARTMENT HOTEL, RUTH SEWALL, d/b/a NASSAU HOTEL, JOSEPH LIBBY, d/b/a CROYDON ARMS APT., IRVING SCHOENFELD, d/b/a LINCOLN PLAZA, STANLEY FRANKEL, d/b/a ALAMO HOTEL, ISIDORE LEVINE, d/b/a LESLIE HOTEL, AL FISHMAN, d/b/a COMMODORE HOTEL, MORRIS STEINBERG, d/b/a MALABO APARTMENT, on behalf of themselves and all others similarly situated,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA; TO THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA; AND TO THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA

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INDEX

STATUTES AND AUTHORITIES

CASES CITED

in the

Supreme Court

of the

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CITY OF MIAMI BEACH,
a municipal corporation

Petitioner

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BERNARD JACOBS, d/b/a THE PARK APARTMENT HOTEL, RUTH SEWALL, d/b/a NASSAU HOTEL, JOSEPH LIBBY, d/b/a CROYDON ARMS APT., IRVING SCHOENFELD, d/b/a LINCOLN PLAZA, STANLEY FRANKEL, d/b/a ALAMO HOTEL, ISIDORE LEVINE, d/b/a LESLIE HOTEL, AL FISHMAN, d/b/a COMMODORE HOTEL, MORRIS STEINBERG, d/b/a MALABO APARTMENT, on behalf of themselves and all others similarly situated,

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The Petitioner, the CITY OF MIAMI BEACH, a municipal corporation of the State of Florida, created by a Special Act of the Legislature, prays that this Court issue its writ of certiorari to the Supreme Court of the State of Florida; to the Third District Court of Appeal of Florida; and to the Circuit Court of the Eleventh Judicial Circuit of the State of Florida, to review the judgment of the latter Court made and entered on November 24, 1975; affirmed by the Third District Court of Appeal of Florida on December 23, 1976 (Petition for Rehearing denied on January 13, 1977); and to review the order of the Florida Supreme Court entered on May 31, 1977 denying the CITY'S Petition for Writ of Certiorari to the Third District Court of Appeal (Petition for Rehearing denied on July 29, 1977).

REPORTS OF OPINIONS IN COURTS BELOW

The opinion of the Circuit Court of the Eleventh Judicial Circuit of Florida is unreported, but appears in the appendix hereto.

The decision of the Third District Court of Appeal is reported in 341 So.2d 236-238. A copy of said opinion is set forth in the appendix hereto.

The opinion of the Florida Supreme Court is not yet reported, but is also set out in the appendix.

STATEMENT OF GROUNDS OF JURISDICTION OF THIS COURT

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3), because the petitioning City has been deprived of due process of law and denied the equal protection of the law under the Fifth and Fourteenth Amendments to the United States Constitution by state action through the decree of the Circuit Court of the Eleventh Judicial Circuit of the State of Florida, the decision and judgment of the Third District Court of Appeal of Florida affirming the same and the decision and judgment of the Florida Supreme Court denying certiorari, as agencies of the State of Florida.

The decisions on which review is sought were rendered by the highest courts of the state. All appellate remedies of the state courts have been exhausted.

The jurisdiction of this Honorable Court is also invoked pursuant to Rule 19-1(a) of the Rules of this Honorable Court because the courts hereinabove enumerated have denied a federal question of substance not in accord with the applicable decisions of this Honorable Court.

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process and Equal Protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

DATES OF JUDGMENTS SOUGHT TO BE REVIEWED AND TIME OF ENTRY

The judgment of the Circuit Court is dated November 24, 1975 and said judgment was entered on January 5, 1976.

The judgment of the Third District Court of Appeal is dated December 23, 1976 and the date of entry is the same.

The judgment of the Florida Supreme Court is dated May 31, 1977 and said judgment was entered on the same day.

The order of the Florida Supreme Court denying Petition for Rehearing was dated July 29, 1977 and was entered on the same day.

STATUTORY PROVISION CONFERRING JURISDICTION ON THIS COURT

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3) and Rule 19-1(a) of this Court.

QUESTION PRESENTED FOR REVIEW

The Courts below have entered, approved and condoned a judgment entered against the CITY in a so-called "class suit" in which no alleged member thereof received any notice whatsoever of the institution of the suit, or its progress before or even after judgment. All this was done under authority of Florida Rules of Civil Procedure, Rule 1.220 governing Class Actions, which reads as follows:

"When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole."

This Rule is so vague and uncertain that any court is authorized to exercise such unbridled discretion thereunder as to render the Rule constitutionally impermissive and permits the Petitioner to be deprived of property without due process of law in violation of the Fifth and Fourteenth Amendments to the Florida Constitution; it permits the courts of the State of Florida to ignore the due process requirement for "class actions" mandated by the decisions of this Honorable Court in *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 40 L.Ed.2d 732, 94 S.Ct. 2140 (1974), *American Pipe and Construction Co. v. State of Utah*, 414 U.S. 538, 38 L.Ed.2d 713, 94 S.Ct. 756 (1974), and *Hansberry v. Lee*, 311 U.S. 32, 61 S.Ct. 115 (1940).

STATEMENT OF THE CASE

The Respondents (eight of them) filed a suit in equity in the Circuit Court of the Eleventh Judicial Circuit of Florida to obtain the refund from the CITY of monies collected by the City from them under the provisions of an ordinance imposing a "fire-line charge" against the owners of all multiple-family residences and commercial buildings using City water service. Parenthetically, it may be said that a "fire-line" is an additional water line to a building to

provide an additional supply of water for a fire hose installed in such buildings. A copy of this ordinance appears as Exhibit A to the Complaint. (App. 9-10)

This suit was brought as a purported "class action" even though no notice whatsoever at any stage of the proceedings was given to any member of the so-called "class."

Following appropriate pleadings, the case came to trial, following which the Circuit Court entered a decree against the CITY holding the City ordinance to be unconstitutional and requiring the CITY to refund to the members of the class any charge paid by them under this ordinance. The court retained jurisdiction for the purpose of awarding attorney's fees to the attorney for the plaintiffs and members of the so-called "class." (Appendix pp. 11-13)

This decree was appealed to the Third District Court of Appeal and that court affirmed the judgment of the Circuit Court by an opinion and judgment filed on July 29, 1975 and reported in 315 So.2d 227. This opinion is set out at pages 14-17 of the appendix.

Thereupon the Respondents returned to the Circuit Court for a trial on attorney's fees to be awarded to the attorney for the Respondents and as the self-appointed attorney "representing" the members of the purported "class." This hearing was held, over the objection of the Petitioner City, on the ground that no notice had been given to any member of the so-called "class" (Appendix pages 18-19). Notwithstanding, the Circuit Court entered judgment awarding a 37% attorney's fee on the entire amount collected by the City under the ordinance, to be paid out of each "class member's" share of the recovery.

On appeal, the Third District Court of Appeal affirmed the award of the 37% attorney's fee; held that the City had no standing to raise the objection of lack of notice to members of the class; but reversed that portion of the decree of the Circuit Court requiring that the attorney's fee be paid on the full amount of the money collected by the City under the ordinance. The objection made in the Third District Court of Appeal to lack of notice was raised by proper assignments of error. The opinion of the Court appears at pages 21-24 of the appendix.

The CITY'S Petition for Rehearing was denied, and the CITY'S Petition for Writ of Certiorari to the Florida Supreme Court was also denied, one Justice dissenting. The question of lack of notice was raised in the CITY'S Petition for Writ of Certiorari (appendix pp. 25-28); in its supporting briefs and by its Petition for Rehearing to the order of the Florida Supreme Court denying certiorari (appendix pp. 29-30; 31-32). The Petition for Rehearing was denied by the Florida Supreme Court on July 29, 1977 and granting the CITY a stay of the proceedings for 30 days to enable the CITY to file this Petition for Writ of Certiorari (appendix pp. 33).

ARGUMENT

The Courts below have approved and condoned the award of a fee in a purported "class suit" to an attorney for representing alleged members of an alleged "class;" the fee to be deducted from each member's aliquot share of monies paid, even though no member of the alleged "class" had any knowledge of the suit, nor of the proceedings had on the fixing and award of the attorney's fee.

Rule of Procedure governing class suits in Florida. This Rule is set forth hereinabove. Under this Rule anything goes. The Petitioner contends that any procedure for notice and opportunity to be heard less than that set forth in the Federal Rules governing class suits (Rule 23) is constitutionally prohibited. The City is a directly affected party because a void proceeding does not avail the City as a defense in another suit brought against it by a person disclaiming representation in the suit complained of.

Respectfully submitted,

BURNETT ROTH
Attorney for Petitioner
420 Lincoln Road, Suite 329
Miami Beach, Florida 33139
Telephone: (305) 538-7423

Of Counsel:

JOSEPH A. WANICK
City Attorney
1700 Convention Center Drive
Miami Beach, Florida 33139
Telephone: (305) 673-7470

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Petition for Writ of Certiorari and Appendix thereto has been served by mail upon JOSEPH PARDO, ESQ., Attorney for Respondents, Penthouse One, Roberts Building, 28 West Flagler Street, Miami, Florida 33130, this day of September, 1977.

Appendix

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT
IN AND FOR
DADE COUNTY, FLORIDA.

NO. 72-22041

BERNARD JACOBS, d/b/a THE PARK APARTMENT HOTEL, RUTH SEWALL, d/b/a NASSAU HOTEL, JOSEPH LIBBY, d/b/a CROYDON ARMS APT., IRVING SCHOENFELD, d/b/a LINCOLN PLAZA, STANLEY FRAIBEL, d/b/a ALAMO HOTEL, ISIDORE LEVINE, d/b/a LESLIE HOTEL, AL FISHMAN, d/b/a COMMODORE HOTEL, & MORRIS STEINBERG, d/b/a MALABO APARTMENT, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

THE CITY OF MIAMI BEACH,
a municipal corporation,

Defendant.

CLASS ACTION

COMES NOW the Plaintiffs, by and through their undersigned attorney and sues the Defendant, THE CITY OF MIAMI BEACH, a municipal corporation, and alleges:

1. This is a Class Action for relief within the jurisdiction of this Court, brought pursuant to Florida Rules of Civil Procedure, Rule 1.220.

2. Plaintiffs are property owners or lessees of property, located on Miami Beach, Florida, and the Defendant is a municipal corporation of the State of Florida, incorporated under the laws of the State of Florida on or about March 26, 1915.

3. As part of the Code of THE CITY OF MIAMI BEACH, THE CITY OF MIAMI BEACH furnishes certain water and private fire service; and fire-line service to the various property owners of THE CITY OF MIAMI BEACH.

4. On or about September 29, 1970, the Defendant, THE CITY OF MIAMI BEACH passed and adopted Ordinance Number 1850 and ordinance amending Chapter 45 of the Code of THE CITY OF MIAMI BEACH, FLORIDA, which provided as follows:

> "Section 1. At Section 45.6 of Chapter 45 of "The Code of the City of Miami Beach, Florida" be and the same is hereby amended by adding the following additional paragraph thereto immediately following paragraph (i):"
>
> "That there is hereby imposed, in addition to any and all other fees or charges imposed by this Chapter, the following additional fees and charges to be known as "fire-line charges", for fire-line connections, stand-by service and maintenance:"

> "Eight inch fire-lines, $42.50 monthly, $510.00 annually; Six-inch fire-lines, $25.00 monthly, $300.00 annually; Four-inch fire-lines, $20.00 monthly, $240.00 annually; Three-inch fire-lines, $20.00 monthly, $240.00 annually"
>
> "Said fire-line charges shall be payable at the time of all other monthly service charges as set forth in Section 45.4 of the Code."

5. Pursuant to Ordinance Number 1850, the Defendant, THE CITY OF MIAMI BEACH, did proceed to send out bills and statements to the property owners for said "fire-line charges" copy of a representative statement is attached hereto and made a part hereof.

6. That in addition to the water charges sent by the Water Division, there was included the fire-line fee with the additional demand that five percent (5%) penalty will be added if not paid within a specific period of time, which was approximately twelve (12) days after said statement was rendered and an additional five percent (5%) penalty per month, so long as said statements remained unpaid.

7. That in addition, Section 45-6 of THE MIAMI BEACH City Code provided:

> "(e) Violation by the owner of any of the regulations in this section shall terminate the regulation set forth in sub-sections (a), (b), (c) and (d) of this section and because of such violation, the Water Department may disconnect the pipes or stop the flow of water through the same.

The statement rendered by THE CITY OF MIAMI BEACH also provided:

> "If bill is not paid on or before due date, water service will be disconnected."

8. The Plaintiffs' Class consists of all persons subject to the additional fees and charges known as "fire-line charges" for fire-line connections, stand-by service and maintenance, imposed pursuant to Ordinance Number 1850.

9. That all of the Plaintiffs herein and all those similarly situated paid said fire-line charges, as above set forth, under protest, to THE CITY OF MIAMI BEACH, the Defendant herein, under the threat and fear of having their water supply shut off in the event that said bills were not paid, and in addition, in fear of being subjected to the five percent (5%) penalty added per month to said charges so long as said fees were not paid.

10. The Class of Plaintiffs set forth herein, and all those similarly situated, who duly paid, under protest, the fire-line charges set forth above, consist of approximately fifteen hundred (1500) to two thousand (2,000) members and are so numerous that the joinder of all members is impractical.

11. That the Plaintiffs herein charge that THE CITY OF MIAMI BEACH Ordinance Number 1850, now Section 45-6 (j) of The Code of The City of Miami Beach, is invalid, unreasonable, arbitrary, discriminatory, illegal and contrary to the laws of the State of Florida.

12. That the Plaintiffs herein charge that the rates set forth, as additional fees, and charges, known as additional fire-line charges, set forth in Ordinance Number 1850, now Section 45-6(j), are unreasonable and unjust and should be set aside and vacated.

13. That the Honorable George E. Schulz, in the case of Mac-ar-Mel, Inc., et al., plaintiffs, vs. The City of Miami Beach, Defendant, Case Number 71-13460, has declared said Ordinance Number 1850, now Section 45-6(j), as invalid, unreasonable, arbitrary, discriminatory, illegal and contrary to the laws of the State of Florida and have been declared to be unreasonable and unjust and has been set aside and vacated.

14. That the Plaintiffs herein, although demand has been made to THE CITY OF MIAMI BEACH for the return of the amounts of money previously paid by the Plaintiffs and all those similarly situated, for the charges known as the "fire-line charges", THE CITY OF MIAMI BEACH has refused to return said money to the members of the Plaintiff's Class, who paid under protest said "fire-line charges".

15. That the questions of law and fact herein are common to all members of the Class.

16. That the claims or defenses of the representative parties are typical of the defenses or claims of the Classes.

17. That the representative parties will fairly and adequately protect the interest of the Classes, the members of which are determinable by a practical discovery.

18. That the bringing of separate actions by or against individual members of the Classes is impractical and further might result in inconsistent or varying adjudication with respect to individual members of the Class, which would establish incompatable standards of conduct for both Classes.

19. The questions of law and fact, to the members of the Classes predominate over any questions affecting only individual members, thereby making the Class Action superior to other available methods for a fair and efficient adjudication of the within controversy.

20. The Defendant was placed on notice of the fact that its billing and collecting of the fire-line charges was improper, unreasonable and arbitrary and demand was made to THE CITY OF MIAMI BEACH not to collect said improper charges, under Ordinance Number 1850.

21. That the Defendant, on or about July, 1971, was ordered and enjoined, THE CITY OF MIAMI BEACH, its agents, servants and employees responsible for enforcing Ordinance Number 1850 of THE CITY OF MIAMI BEACH, now known as Section 45-6(j), of the Code of The City of Miami Beach, notwithstanding said injunction, against the enforcement of said Ordinance, the Defendant, THE CITY OF MIAMI BEACH, still continued to send out its bills and demand for the payment of the bills under the threats of the five percent (5%) monthly penalty as well as the threats of the cutting off of the water supply to the property owners using said fire-line charges.

22. That as a result of the action of the Defendant, THE CITY OF MIAMI BEACH became indebted to the Plaintiffs and the members of their Class for the money

that had been received by said Defendant for the unlawful, unreasonable, arbitrary, fire-line charges imposed pursuant to the invalid Ordinance Number 1850.

23. Although demand had been made to the Defendant for the return of said fire-line charges paid and the said sum is now due and owing with interest thereon to the Plaintiffs and to all those similarly situated.

24. That as a result of the actions of the Defendant, the Plaintiffs and the members of their Class have suffered damages and will continue to suffer damages and have required and will require the services of an attorney to prosecute this cause, and have agreed to pay him a reasonable attorney's fee for said representation.

WHEREFORE, the Plaintiffs request this Court to:

A. Take jurisdiction of the parties and this cause.

B. Determine and declare this to be an action by a Class of the Plaintiffs against the Defendant.

C. Define and determine the Class of Plaintiffs.

D. Order an accounting of the fire-line charges collected by the Defendant pursuant to the invalid Ordinance Number 1850.

E. Render a Judgment for the Plaintiffs and their Class for compensatory damages suffered as a result of said invalid fire-line charges exacted over the protests of the Plaintiffs and all those similarly situated.

F. Render a Judgment in favor of the Plaintiffs and all those similarly situated for costs, interest and a reasonable attorney's fee.

G. Grant such other relief as this Court may deem appropriate and just.

/s/ Joseph Pardo
JOSEPH PARDO
Attorney For
Plaintiffs and All
Those Similarly Situated
1406 Biscayne Building
19 West Flagler Street
Miami, Florida 33130

ORDINANCE NO. 1850

AN ORDINANCE AMENDING CHAPTER 45 OF "THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA."

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Section 45.6 of Chapter 45 of "The Code of the City of Miami Beach, Florida," be and the same is hereby amended by adding the following additional paragraph thereto immediately following paragraph (i):

"That there is hereby imposed, in addition to any and all other fees or charges imposed by this chapter, the following additional fees and charges to be known as 'Fire Line Charges', for Fire Line connections, stand by service and maintenance:

8 inch Fire Lines $42.50 monthly
$510.00 annually
6 inch Fire Lines $25.00 monthly
$300.00 annually
4 inch Fire Lines $20.00 monthly
$240.00 annually
3 inch Fire Lines $20.00 monthly
240.00 annually

Said Fire Line charges shall be payable at the time of all other monthly service charges as set forth in Section 45.4 of the Code."

SECTION 2. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. The health and welfare of the City being in peril, the three readings of this ordinance shall be had in one session and the City Council finding that this ordinance is necessary for the immediate protection of its citizens, it shall therefore go into effect October 1, 1970.

PASSED and ADOPTED this 29th day of September, 1970.

(Signed) Jay Dermer
Mayor

Attest:
(Signed) Ruth B. Rouleau
City Clerk-Finance Director

(SEAL)

1st reading - September 29, 1970
2nd reading - September 29, 1970
3rd reading - September 29, 1970
POSTED - October 27, 1970

PLAINTIFFS' EXHIBIT "A"

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA.

GENERAL JURISDICTION DIVISION

NO. 72-22041 (Judge Testa)

BERNARD JACOBS, et als.,
Plaintiff,

vs.

CITY OF MIAMI BEACH,
a municipal corporation,
Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR THE ENTRY OF ORDER ON MANDATE AND AWARDING A REASONABLE ATTORNEY'S FEE

THIS MATTER coming on to be heard after due notice, upon the Plaintiff's Motion To The Entry Of An Order Pursuant To the Mandate of the District Court of Appeal, Third District, revised Opinion, dated July 29, 1975 (315 So.2d 227), and for the determination of a reasonable attorney's fee to be paid to JOSEPH PARDO, attorney, representing the Class who paid the "fire-line charges", and this Court having heard the testimony of the attorney and the expert testimony to support said Motion and determination as to a reasonable attorney's fee, and having considered the various elements necessary in computing a reasonable attorney's fee as set forth in 32 F.S.A. Code of Professional Responsibility, Canon 2 (D.R.2-106

(b)) and this Court being personally familiar with the work performed by Joseph Pardo, as attorney for the Class in this cause, it is upon due consideration:

ORDERED, ADJUDGED and DECREED that the Defendant, CITY OF MIAMI BEACH, shall pay to JOSEPH PARDO, as attorney representing the Class who paid the "fire-line charges" to the CITY OF MIAMI BEACH, as a reasonable attorney's fee for said representation, an amount equal to THIRTY-SEVEN PERCENT (37%), of the sum of monies collected by the CITY OF MIAMI BEACH from the Class who paid the "fire-line charges", which sum shall include interest at SIX PERCENT (6%) per annum from the date of the entry of this Court's Amended Final Decision, dated April 8, 1974, until paid, pursuant to F.S.A. §55.03, and said sums shall be paid forthwith, and it is further

ORDERED, ADJUDGED and DECREED that the CITY OF MIAMI BEACH shall refund to each of the members of the Class who paid to the CITY OF MIAMI BEACH who paid the "fire-line charges" the amounts paid by said members of the Class, together with interest, as aforesaid, less the amount of THIRTY-SEVEN PERCENT (37%) hereinbefore awarded to JOSEPH PARDO, as a reasonable attorney's fee, for representing said Class, and said sums shall be paid forthwith, and it is further:

ORDERED, ADJUDGED and DECREED that the CITY OF MIAMI BEACH shall, within 30 days from the date hereof, furnish to JOSEPH PARDO, as attorney for the Class, the names, addresses and amounts paid by the customers of the Class who paid the "fire-line charges" to the CITY OF MIAMI BEACH. (see paragraph 16 of this Court's Final Decision, dated April 8, 1974), and the CITY

OF MIAMI BEACH shall permit JOSEPH PARDO, or his authorized representative, to inspect and verify and copy the names addresses and amounts of the figures and information furnished by the CITY OF MIAMI BEACH, and it is further:

ORDERED, ADJUDGED and DECREED that this Court retains jurisdiction for the purpose of enforcing the terms and conditions of this Order and for the entry of such other and further Orders as may be necessary to implement the enforcement of this Court's Decree.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 24 day of November, 1975.

THOMAS A. TESTA
CIRCUIT COURT

Proposed Order mailed 11/14/75
to: Broad & Cassel & Joseph A. Wanick

Conformed Copies To:

Joseph Pardo, Esq.
Joseph A. Wanick, Esq.
Broad & Cassel, Esqs.

IN THE DISTRICT COURT
OF APPEAL OF FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 1975
CASE NO. 74-677

CITY OF MIAMI BEACH, a
municipal corporation,

Appellant,

vs.

BERNARD JACOBS, et al.,

Appellees.

Opinion filed July 29, 1975.

An Appeal from the Circuit Court for Dade County, Thomas A. Testa, Judge.

Joseph A. Wanick, City Attorney, for appellant.

Broad & Cassel; Joseph Pardo, for appellees.

Before BARKDULL, C.J., and PEARSON and HENDRY, JJ.

REVISED OPINION

PEARSON, Judge.

The City of Miami Beach appeals a final judgment in a class action suit[1] which ordered the repayment to the class of money paid by the members of the class to the City under an ordinance which imposed fees and charges to be known as "fire line charges." The ordinance had been declared unconstitutional in a prior suit in the same court by a different judge. The present trial judge concurred in that decision and found (1) that the plaintiffs represented a proper class, and (2) that because the invalid ordinance carried penalties for nonpayment of the periodic charges, the payments made of the charges must be considered as "payment under protest."

The City presents three points, as follows: (1) it was error to find this to be a proper class suit; (2) it was error to find the ordinance invalid; and (3) the trial judge erred in failing to find for the City upon its defense of laches. We hold that no reversible error is shown.

The finding of the trial judge that this was a proper class suit is supported by the holdings in the following cases: City of Miami Beach v. Tenney, 150 Fla. 241, 7 So.2d 136 (1942); Watnick v. Florida Commercial Banks, Inc., Fla.App.1973, 275 So.2d 278; Port Royal, Inc. v. Conboy, Fla.App.1963, 154 So.2d 734.

---

[1] "The class shall be all of the customers of the City of Miami Beach Beach, who paid the 'fire-line charges' under ordinance number 1850 of the City of Miami Beach, §45-6(j) of the City Code of the City of Miami Beach, since October 1, 1970."

In the City's argument directed to the trial court's finding that the ordinance is invalid, it is urged that the trial judge acted entirely upon the prior determination of another judge in another case in the same court. This argument is refuted by the specific findings contained in the judgment. The judge pointed out:

> "This Court concurs in the Opinion of Judge Schulz and independently finds, from the evidence presented, that the Ordinance Number 1850, also known as §45-6(j) of the City of Miami Beach Code, is invalid, unreasonable, arbitrary, discriminatory, illegal and contrary to the laws of the State of Florida, and does herein also set said Ordinance aside, and of no force and effect."

There remains on this point only the determination of whether there was sufficient competent evidence to support the finding. We find that the ordinance is invalid on its face and that, therefore, there was no need for special evidence on this issue. We are here dealing with an ordinance proposing to levy upon certain properties a monthly charge if the properties' fire lines exceeded stated sizes. This charge was not a charge for use but simply for the right to be connected into the City water system. The ordinance makes no attempt to earmark the funds for the purpose of financing an expansion of the system or for increased costs of any kind. It establishes a bare charge without relation to use or a legally collectable connection fee. See City of Dunedin v. Contractors & Builders Ass'n., Fla.App.1975, 312 So.2d 763. See also cases cited at 84 C.J.S. Taxation § 22b (1954) and 31 Fla. Jur. Taxation § 62 et seq.

It is true, as the City urges, that a trial judge is not bound by another trial judge's declaration of uncon-

stitutionality of an ordinance in the judgment of another case. But in view of the above-quoted finding of the present trial judge, which was made independently and which is supported in the record, we will affirm.

The City's contention, under its third point, that it was entitled to a judgment as a matter of law because of the laches of the plaintiffs is not supportable on this record. See Tampa Water Works Co. v. Wood, 104 Fla. 306, 139 So. 800 (1932).

Affirmed.

IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 72-22041

BERNARD JACOBS, d/b/a,
THE PARK APARTMENT HOTEL,
Plaintiffs,

vs.

CITY OF MIAMI BEACH,
Defendant.

Dade County Courthouse,
Miami, Florida,
Wednesday, 10:45 a.m.,
November 12, 1975.

The above-styled cause came on for hearing before The Honorable Thomas A. Testa, Circuit Judge.

MR. PARDO: Your Honor, I have been practicing law since 1950. I undertook this fee on a contingency fee with my client and in the various things that were done in this case. I have expended approximately three hundred and fifty to four hundred hours involving interviews with clients, hearings before the Court, research of —

MR. WANICK: Now, Your Honor, may I also suggest this: The people who are paying this attorney's fee, of

course. I see nothing in the record where they have been given any notice as to this application for attorney's fee.

The City of Miami Beach is not paying this attorney's fee, the people for whom this fund has been collected are responsible for the attorney's fee.

I submit that due process of law requires that the people who pay the bill should be given notice of this application.

I do not see how you can award an attorney's fee against people without giving them notice as to what the testimony is going to be.

THE COURT: Let us proceed.

IN THE DISTRICT COURT
OF APPEAL OF FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 1976

CASE NO. 76-33
76-34

THE CITY OF MIAMI BEACH,
a municipal corporation,
Appellant,

vs.

BERNARD JACOBS, et al.,
Appellees.

Opinion filed December 23, 1976.

Appeals from the Circuit Court for Dade County, Thomas A. Testa, Judge.

Joseph A. Wanick, for appellant.

Joseph Pardo; Broad & Cassel, for appellees.

Before PEARSON and HENDRY, JJ., and CHARLES CARROLL (Ret.), Associate Judge.

CARROLL, Associate Judge.

This is an appeal by the City of Miami Beach, the defendant in a class action, from an order relating to at-

torney fees for the attorney for the plaintiff class. Both an interlocutory and a plenary appeal were filed. We deal with it as a plenary appeal.

The action involved the validity of an ordinance under which the City of Miami Beach had imposed and collected certain "fire line charges", over a period from certain of its citizens. The trial court entered a judgment holding the ordinance was invalid; that the action was properly a class action and that the members of the class were entitled to repayment by the city of such charges which were paid by them pursuant to the ordinance. The City of Miami Beach appealed therefrom and this court affirmed. See City of Miami Beach vs. Jacobs, 315 So. 2d 227 (Fla. 3d DCA 1975).

Thereafter the attorney for the plaintiff class moved for allowance of a fee. The trial court ordered that the defendant, City of Miami Beach, pay to the attorney for the plaintiff class, as his fee for representing the plaintiffs, 37% "of the monies collected by the City of Miami Beach from the class who paid the fire line charges plus interest at 6% per annum from the date of entry of the trial court judgment which was April 8, 1974", and directed the city to pay such sums to the plaintiffs' attorney forthwith.

The order then directed the City of Miami Beach to make refund to the members of the class, as follows:

> "Ordered, adjudged and decreed that the City of Miami Beach shall refund to each of the members of the Class who paid to the City of Miami Beach who paid the 'fire-line charges' the amounts paid by said members of the Class, together with interest, as aforesaid, less the amount of Thirty-

> seven percent (37%) hereinbefore awarded to Joseph Pardo, as a reasonable attorney's fee, for representing said Class, and said sums shall be paid forthwith".

On this appeal from that order the city seeks reversal on the ground that notice of the attorney's application for the fee was not given to the members of the class and seeks modification of the order to eliminate the provisions adding interest, and directing the city to pay the plaintiffs' attorney "forthwith" 37% of the amount collected by the city under the ordinance.

As to the first point it appears that there was a stipulation in the case waiving the requirement to give notice to the individual members of the class during the progress of the action. That would not be binding on the members of the class with reference to an application of their attorney for allowance of fees, since their attorney would not be entitled to waive notice for them for that purpose. However the objection in that regard does not come from any members of the plaintiff class and as raised on behalf of the defendant City of Miami Beach it is without merit.

We find no error in the provision of the order which conferred upon the members of the class interest on the amounts to which the court found the city was obligated to reimburse them. The interest provided for by the court was that which would accrue from the time of the entry of the judgment determining the plaintiffs were entitled to refunds from the city, as provided for by Section 55.03 Florida Statutes, 1973. See Southeastern Mobile Homes, Inc. v. Transit Homes, Inc. 192 So. 2d 53, 57-58 (Fla. 2d DCA 1966); Stone v. Jeffres, 208 So. 2d 827, 829 (Fla. 1968).

On the city's contention that the court erred in ordering payment of the fee forthwith, the city argues that the attorney's fee should be paid prorata by those members of the class to whom refund is made, by deducting the percentage fee due the attorney from the amount to which each individual member of the class is entitled, as and when refund payment is made to a member of the class entitled to and seeking refund.

We hold that argument of the city has merit. The city is not obligated for a fee to the attorney for the class. The attorney is entitled to a fee from the members of the class he represented who shall receive repayment from the city of the fire line charges paid by them. Some entitled thereto may not seek refund, or for some reason may not be located.

The provision of the order directing the City of Miami Beach to pay forthwith to the attorney a fee of 37% of the amount the city collected with interest thereon, when read with the above quoted provision of the order relating to refund payments to individual members of the class, does not make it clear whether the city was to pay the plaintiffs' attorney fees in advance or by withholding his fee from each refund made. To the extent the order is construed to call for the city to deliver forthwith to the attorney an amount which would be 37% of the sums collected under the invalid ordinance, it is hereby reversed. The order is amended to direct the city, upon a payment or refund being made to a member of the class, to withhold a 37% attorney's fee therefrom and from time to time, without undue delay, remit such withheld fees to the attorney.

It is so ordered.

IN THE SUPREME COURT OF FLORIDA

CASE NO. 50,973

CITY OF MIAMI BEACH,
a municipal corporation,
Petitioner,

vs.

BERNARD JACOBS, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

Petitioner, CITY OF MIAMI BEACH, a municipal corporation, presents this, its Petition for Writ of Certiorari, and states:

1. Petitioner seeks to have reviewed a decision of the District Court of Appeal of Florida, Third District, dated December 23, 1976, reported in _____ So.2d _____, and Order denying Petition for Rehearing, dated January 13, 1977, on a "direct conflict basis."

2. This Petition is presented under and pursuant to Article V, Section 3(b) 3, of the Florida Constitution, and Rule 4.5(c) of the Florida Appellate Rules.

3. Petitioner files herewith its motion requesting additional time to file an appropriate record of so much of the proceedings herein as is necessary to show the jurisdiction of this Court and also for additional time to file its brief in support of this Petition.

4. The facts in this case are as follows:

On October 26, 1972, the Respondent filed a suit in the Dade County Circuit Court challenging the City's ordinance imposing a "fire line charge" on all the City's commercial, hotel, and apartment house water consumers. On January 22, 1974, the Circuit Court entered a final decree declaring the ordinance void and unconstitutional, and directing the City to refund to the persons who paid this charge.

The Circuit Court reserved jurisdiction to award attorney's fees to the Plaintiffs' attorney for the reason that he claimed to represent a large number of Plaintiffs, constituting a "class". The Third District Court of Appeal affirmed this decision. City of Miami Beach v. Bernard Jacobs, et al., (3rd D.C.A.) 315 So.2d 227. This case was remanded to the Circuit Court. Thereafter, the Circuit Court held a hearing to determine the amount to be paid to the Plaintiffs' attorney for his fee. Notwithstanding the City's objection that the individual members of the purported class had been given no notice of a hearing or an opportunity to be heard on this matter, the Circuit Court proceeded to award 37% of the total amount which the City was required to refund. The City appealed this decree to the Third District Court of Appeal on the following grounds:

(1) That the individual members of the purported class had not been given notice or an opportunity to be heard in the hearing fixing attorney's fees.

(2) That the decree ordered the City to pay this fee out of the gross amount collected and held by the City instead of deducting the same from the individual refunds when, and if, demand was made upon the City for the same.

The Third District Court of Appeal affirmed the decree on the first ground, but reversed on the second.

The City files this Petition for Writ of Certiorari directed to that portion of the opinion and judgment of the Third District Court of Appeal which holds:

(A) That the City is not the proper party to raise the jurisdictional question pertaining to the individual members of the purported class, and

(B) That the individual members of the "class" are not entitled to notice and an opportunity to be heard on the amount of attorney's fees to be paid to the attorney for the purported "class".

5. The decision below is in direct conflict with the following decisions: Tenney v. City of Miami Beach, (Fla.) 11 So.2d 188; E. J. Frankel, et al. v. City of Miami Beach, Florida Supreme Court Case No. 45,932; Sanford v. Rubin, (Fla.) 237 So.2d 134, conformed to 239 So.2d 49; State Plant Board v. Smith, (Fla.) 110 So.2d 401; Cavalier v. Ignas, (Fla.) 290 So.2d 20, conformed to 294 So.2d 720; Ryan's Furniture Exchange v. McNair, (Fla.) 162 So. 483; Scholastic Systems, Inc. v. LeLoup, (Fla.) 307 So.2d 166.

For the reasons and authorities set forth herein, and to be set forth in Petitioner's brief, it is respectfully submitted that the decision sought to be reviewed is erroneous and in direct conflict on the same point of law with the decisions set forth in Paragraph 5 hereof.

WHEREFORE, Petitioner requests this Honorable Court to grant a Writ of Certiorari and enter its order quashing the decision and order sought to be reviewed, and granting such other and further relief as shall seem right and proper to the Court.

Respectfully submitted,

/s/ Joseph A. Wanick
JOSEPH A. WANICK,
City Attorney
Attorney for Petitioner
City of Miami Beach
1130 Washington Avenue
Miami Beach, Florida 33139
Phone: (305) 673-7470

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT, was mailed this 25 day of January, 1977, to JOSEPH PARDO, ESQ., Penthouse One, Roberts Building, 28 W. Flagler Street, Miami, Florida 33130.

/s/ Joseph A. Wanick

Supreme Court of Florida

TUESDAY, MAY 31, 1977

CASE NO. 50,973

DISTRICT COURT OF APPEAL,
3rd DISTRICT
DCA CASE NOS. 76-33
76-34

CITY OF MIAMI BEACH, etc.,
Petitioner,
Cross-Respondent,

vs.

BERNARD JACOBS, et al.,
Respondents,
Cross-Petitioners.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

BOYD, Acting Chief Justice, ENGLAND, HATCHETT and KARL, JJ., Concur SUNDBERG, J., Dissents

The Cross-Petition for Writ of Certiorari in the above cause, is hereby denied.

BOYD, J., Acting Chief Justice, ENGLAND, SUNDBERG, HATCHETT and KARL, JJ., Concur

A True Copy

B

TEST:
/s/ SID J. WHITE
Sid J. White
Clerk Supreme Court.

cc: Hon. William Carter, Clerk
Hon. Richard Brinker, Clerk
Hon. Thomas A. Testa, Judge
Hon. Joseph A. Wanick,
City Attorney
Joseph Pardo, Esquire
Messrs. Broad & Cassel

IN THE SUPREME COURT OF FLORIDA

CASE NO. 50,973

CITY OF MIAMI BEACH,
a municipal corporation,
Petitioner,

-vs-

BERNARD JACOBS, et al.,
Respondents.

PETITION FOR REHEARING

COMES NOW the Petitioner, CITY OF MIAMI BEACH, and respectfully prays this Honorable Court for its order herein granting a rehearing of its Order and Judgment entered on May 31, 1977 denying the Petition of the City of Miami Beach for a Writ of Certiorari in the above cause. For grounds hereof, the Petitioner says:

1. That this Honorable Court did not address itself to the fundamental jurisdictional question raised by the Petitioner to the effect that the Dade County Circuit Court was wholly without jurisdiction because no claim was made by the Plaintiff (Respondent here) or any member of the purported class involved that his claim met the $2,500 jurisdictional amount required to invoke the jurisdiction of the Circuit Court, and, therefore, this Honorable Court is required to enter an order directing the Circuit Court to dismiss the cause for lack of jurisdiction.

2. That the City of Miami Beach, Petitioner herein, cited and relied upon the decision of the United States

Supreme Court in Eisen v. Carlisle and Jacquelin, 417 U.S. 156, 94 S.Ct. 2140, 40 L.Ed.2d 732 (1974), for the proposition: (a) that the members of an alleged class are entitled to their day in court and to receive due, proper and reasonable notice of any court proceeding which affects their rights or property, and (b) that it is the legal duty of the plaintiff in any alleged class suit, at his expense, to give that notice to any and all putative members of an alleged class.

Since the decision of the United States Supreme Court is the law of the land, the Order and Judgment of the Dade County Circuit Court requiring the City to pay the cost of giving notice to the members of the alleged class is contrary thereto and deprives the City of Miami Beach of its rights and property without due process of law, in violation of the Fourteenth Amendment of the United States Constitution.

Respectfully submitted,

/s/ Joseph A. Wanick
JOSEPH A. WANICK,
City Attorney
Attorney for Petitioner
1130 Washington Avenue
Miami Beach, Florida 33139
Telephone: (305) 673-7470

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITION FOR REHEARING was mailed this 10th day of June, 1977, to JOSEPH PARDO, ESQUIRE, Penthouse One, Roberts Building, 28 West Flagler Street, Miami, Florida 33130.

/s/ Joseph A. Wanick

IN THE SUPREME COURT OF FLORIDA

FRIDAY, JULY 29, 1977

CASE NO. 50,973

CITY OF MIAMI BEACH, ETC.,
Petitioner,

vs.

BERNARD JACOBS, ET AL.,
Respondents.

Petitioner's Petition for Rehearing is hereby denied, and it is further

ORDERED that the Petition for Stay of Mandate filed by petitioner is hereby granted and proceedings in this Court and in the District Court of Appeal, Third District, and in the Circuit Court in and for Dade County, Florida, are hereby stayed to and including August 29, 1977 to allow petitioner to seek review in the Supreme Court of the United States and obtain any further stay from that Court.

Y
CC: Clerk, DCA 3
Clerk Circuit Court
Hon. Thomas A. Testa, Judge
Hon. Joseph A. Wanick
Hon. Joseph Pardo
Broad & Cassel

A True Copy

TEST:
/s/ SID J. WHITE
Sid J. White
Clerk Supreme Court.

In the Supreme Court of the United States

OCTOBER TERM 1977

CASE NO. A-229 (77-363)

CITY OF MIAMI BEACH, a municipal corporation,
Petitioner

vs.

BERNARD JACOBS, d/b/a THE PARK APARTMENT HOTEL, RUTH SEWALL, d/b/a NASSAU HOTEL, JOSEPH LIBBY, d/b/a CROYDON ARMS APT., IRVING SCHOENFELD, d/b/a LINCOLN PLAZA, STANLEY FRANKEL, d/b/a ALAMO HOTEL, ISIDORE LEVINE, d/b/a LESLIE HOTEL, AL FISHMAN, d/b/a COMMODORE HOTEL, MORRIS STEINBERG, d/b/a MALABO APARTMENT, on behalf of themselves and all others similarly situated,
Respondents

RESPONDENTS REPLY TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA: TO THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA; AND TO THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA

JOSEPH PARDO
Attorney for Respondents
Penthouse One, Roberts Building
28 West Flagler Street
Miami, Florida 33130
Telephone: (305) 371-0391

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STATUTES AND AUTHORITIES

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in the

Supreme Court

of the

United States

OCTOBER TERM 1977

CASE NO. A-229 (77-363)

CITY OF MIAMI BEACH, a municipal corporation,
Petitioner

vs.

BERNARD JACOBS, d/b/a THE PARK APARTMENT HOTEL, RUTH SEWALL, d/b/a NASSAU HOTEL, JOSEPH LIBBY, d/b/a CROYDON ARMS APT., IRVING SCHOENFELD, d/b/a LINCOLN PLAZA, STANLEY FRANKEL, d/b/a ALAMO HOTEL, ISIDORE LEVINE, d/b/a LESLIE HOTEL, AL FISHMAN, d/b/a COMMODORE HOTEL, MORRIS STEINBERG, d/b/a MALABO APARTMENT, on behalf of themselves and all others similarly situated,
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RESPONDENTS REPLY

The Petitioner, the CITY OF MIAMI BEACH, a municipal corporation, in the State of Florida, was the Defendant below, in the Circuit Court of the Eleventh Judicial Circuit.

The Respondents herein were the Plaintiffs below and were members of the "class" who paid and were assessed the "fire-line charges" against their respective properties.

REPORTS OF OPINIONS IN COURTS BELOW

The Order Denying Defendant's Motion To Dismiss, dated March 9, 1973, is unreported but appears in appendix hereto.

The Order of the Circuit Court on pleadings and setting cause for trial, dated May 31, 1973 is unreported but appears in appendix hereto.

The Final Decision of the Lower Court, dated April 8, 1974, is unreported but appears in the appendix hereto.

The Opinion of the District Court of Appeal, Third District, dated July 29, 1975 reported in 315 So.2d 227, copy of said Opinion is in the appendix hereto. (No further appeals were taken from said Opinion.)

The decision of the Lower Court, dated November 24, 1975 is unreported, but appears in the appendix hereto.

The Opinion of the District Court of Appeal, Third District, dated December 23, 1976, reported at 341 So.2d 236, appears in the appendix hereto.

OBJECTION TO STATEMENT OF GROUNDS OF JURISDICTION OF THE SUPREME COURT

The jurisdiction of the Supreme Court is claimed to be invoked under 28 U.S.C. Sec. 1257(3), which provides as follows:

> "(3) By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State Statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where the title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

No such right or authority has been shown to this Honorable Court to justify this Court's jurisdiction under the above provision.

Rule 19-1(a) of the Rules of the Supreme Court also fail to justify this Honorable Court's jurisdiction of any federal question or substance.

THE ALLEGED CONSTITUTIONAL PROVISIONS INVOLVED

The Petitioner claims that the Due Process and Equal Protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution is involved herein.

No such factual issues are involved herein that would justify the CITY in seeking Due Process and Equal Protection where the CITY has been the one who has refused to return the money exacted under a municipal ordinance which has been declared unconstitutional and the CITY has been fighting and delaying in returning the monies to the property owners who paid the illegal charges.

DATES OF JUDGMENTS SOUGHT TO BE REVIEWED AND TIME OF ENTRY

1. The Judgment dated November 24, 1975, and entered January 5, 1976.

2. Opinion of District Court of Appeal, Third District dated December 23, 1976, and entered same date.

3. Opinion of the Florida Supreme Court dated May 31, 1977 and entered on the same date, which denied the Petition For Certiorari, without Opinion, and Petition For Rehearing denied July 29, 1977, without Opinion.

QUESTION PRESENTED FOR REVIEW

The Petitioner seeks to review the Florida Rules of Civil Procedure, Rule 1.220, governing Class Actions.

STATEMENT OF THE CASE

The Petitioner claims that the Respondents filed suit in equity in the Circuit Court of the Eleventh Judicial Circuit, In And For Dade County, Florida, to obtain a refund from the CITY of monies illegally collected by the CITY from them under the provisions of an ordinance imposing a "fire-line charge" against the owners of multiple-family residences and commercial buildings using City water service. The amount of people involved were the initial eight who filed the suit and others who subsequently joined the action, being Atlantic Associates, Inc., Murray Gold, Hilda Feinberg, Florence Lazik, Isadore Levine, White Properties, Inc., Whitehouse Apartment, Inc., White Hotel Corp., and Copacabana, Inc. The Whitehouse Properties, Whitehouse Apartment, Inc. and Whitehouse Corp., and Copacabana, Inc., were represented by other counsel, Broad & Cassel, who also were members of the Class.

By Order of the Circuit Court, dictated March 9, 1973, the Respondent CITY was ordered forthwith to notice each of the customers who paid the "fire-line charges". A copy of the form of notice required to be sent to the members of the Class was attached to said Order.

On May 31, 1973, the Petitioner, CITY, claiming:

> "Great hardship in sending out the notices to all parties and desiring to be relieved of said obligation and requirements to send out notices to all of the parties who paid the 'fire-line tax' . . . "

and the CITY waiving all previous requirements of notice, the CITY was relieved of said requirement by virtue of said Order of May 31, 1973.

On April 20, 1977, after the Orders of April 8, 1974 requiring the CITY to send out notices, the District Court of Appeal of Florida, Third District, affirmed said Order, reported at 315 So.2d 227.

Subsequently, the Court, on November 24, 1975, ordered the CITY to send out notices to all of the members of the "class". The CITY has refused to send out said notices. This Order of the Lower Court was affirmed by the District Court of Appeal, of Florida, Third District, and reported at 341 So.2d 236.

The Respondents herein have cited the Petitioner for Contempt for failure to send out the notices, as previously required and ordered, and has brought to the attention of the Court the Response To Interrogatories by the CITY, originally sent to the CITY on April 9, 1973, wherein the CITY responded to the following question:

> "State the names, addresses, date and amounts paid by the customers who paid the "fire-line charges" to the City of Miami Beach, pursuant to Ordinance 1850 also known as Section 45-6(j). (attached list hereto)."
>
> "A. Objection. The expense of obtaining this information would be prohibitive as well as oppressive. The City's computers are not capable of producing this information as requested."

On June 17, 1977, the Respondents herein again sought to secure the names and addresses and amounts paid and to have Petitioner, CITY, send out the notices to the members of the Class. The CITY has continously, and still refuses to notify the members of the Class up to the present date.

This procedure is part of the dilatory and delaying tactics sought by the Petitioner-CITY, to delay the payment to the members of the Class of the monies due to them. The CITY hopes that eventually the parties will not be located or that eventually the parties will become deceased. But, the CITY has failed to recognize that the members of the Class also are the property owners who are also the parties whose properties were charged.

ARGUMENT

POINT INVOLVED

WHETHER THE SUPREME COURT OF THE UNITED STATES SHOULD ACCEPT JURISDICTION WHERE THE CITY ALONE HAS HAD THE INFORMATION AS TO THE NAMES AND ADDRESSES OF THE MEMBERS OF THE CLASS AND HAD BEEN ORDERED TO SEND OUT THE NOTICES TO THE MEMBERS OF THE CLASS BUT HAS CONTINUOUSLY REFUSED TO ABIDE BY THE ORDERS OF THE COURT, AND NOW SEEKS TO CLAIM A PROCEDURAL DUE PROCESS FOR THE FAILURE OF THE MEMBERS OF THE CLASS TO RECEIVE NOTICE IN CONNECTION WITH THE ASSESSMENT OF ATTORNEYS FEES.

The CITY has been using the delaying and stalling tactics since 1970 to prevent the members of the Class from receiving back the monies paid and charged against the properties of which they were the owners, for "fire-line charges" which have been declared unconstitutional by the Lower Courts.

The Order of May 31, 1973, affirmed by the Appellate Court, Third District Court of Appeal of Florida, on July 29, 1973, reported at 315 So.2d 227, required the CITY to send out the notices to the members of the Class. The CITY did not appeal said Order to the Supreme Court of Florida, and no further appeals were taken in connection with said Orders, which required the sending out the notices to the members of the Class.

The CITY, up to the present date, has wilfully refused to send out the notices to the members of the Class, but yet claims that procedural due process has been violated by the members of the Class not being notified in connection with the present litigation.

The Courts have continuously held that one cannot complain of his own wrongdoing and be the creator of the error and then complain that said error exists and therefore, should set aside the Orders lawfully entered. There were other members of the Class who were represented by independent counsel, to wit: Broad & Cassel, attorneys at law, in Miami Beach, Florida, who did not object to and were present at the time of the Hearing on the attorneys fees that were set by the Court. In addition, the CITY OF MIAMI BEACH was notified and if they were so concerned with the members of the Class and their rights thereunder, certainly, the CITY could have and should have adequately presented any counter-testimony to show that the amounts being sought for reasonable attorneys fee was improper or that said amount, as ultimately assessed, was an unreasonable fee. The CITY does not make any such contention. Although, the CITY recognizes that the CITY is not liable for the payment of the reasonable attorneys fee, but now claims that the CITY is the protector of the rights of these unknown parties who the CITY has refused to divulge to the members of the Class.

The CITY has been in bad faith since 1970 and continues to remain in that category, since no member of the Class has received the return of the monies which were directed to be repaid. The parties who were members of the Class at the time of the initiation of this proceeding still have not received back any of the payments and the CITY continues to hold the monies and refuses to return the same to the members of the Class.

The Courts have continuously held that Appellants must show that the enforcement of the judgment would deprive it, not another of the right arriving under a Federal Constitution. *Liberty Warehouse Company v. Busley Tobacco Growers Co-Op*, (Ky. 1928) 48 S.Ct.291; 276 U.S. 71; 72 L.Ed. 473.

The party invoking the jurisdiction of the Supreme Cout must have a personal interest in the question and the Court has held that a state officer testing the Constitutionality of a state law solely in the interest of third persons has no standing to review the judgment, though a judgment for costs was rendered against him. *Smith v. Indiana*, (1903) 24 S.Ct. 51; 191 U.S. 138.

The Federal Supreme Court will not take jurisdiction of a Writ of Error to the Court which, absence of opinion by the Court below, makes it impossible to say whether its judgment could be sustained independent of the federal question. *Cuyahoga River Power Co. v. Northern Realty Co.*, (Ohio,1917) 37 S.Ct. 643.

The statement of the case reflects that the original Order of the Lower Court on May 31, 1973, and affirmed by the District Court of Appeal, of Florida, Third District, on July 29, 1975, reported at 315 So.2d 227, has never been appealed beyond the District Court of Appeal. No appeal was taken to the Florida Supreme Court. No appeal of said Order was taken to the United States Supreme Court. At that time, all issues concerning the notices that were involved in said decision were decided. It does appear now, that on the separate issue of notice, in connection with attorneys fees, notwithstanding that the CITY was ordered to send out notices concerning the decision and right of the members of the Class to receive back their money, the

CITY has refused and failed, wilfully, to send out said notices as required and ordered. The CITY now complains that because of the failure of the notices to the members of the Class that the decision should be reversed for lack of due process to the other members of the Class.

In the case of *Rio Grande Western Railroad Co. v. Stringham*, (Utah, 1950) 36 S.Ct. 5, 239 U.S. 44, 60 L.Ed. 136, the Court held that a decision of the State Supreme Court on a second appeal affirming the judgment on the ground that the former decision was the law of the case is not reviewable, where the federal opinion was involved in the first decision which was final.

The above case would appear to be controlling under the circumstances, since, in the first opinion the issue as to notice was clearly involved and had already been determined by the Court. The CITY was required, under said Opinion, to send out the notices to the Class. The CITY wilfully refused to send out said notices, although said Opinion was affirmed and became the law of the case.

The principal that the Supreme Court will decline to review Court Judgments which rest on independent and adequate grounds, even where those judgments also decide federal questions, applies not only in cases involving state substantive grounds but also in cases involving procedural grounds. *Henry v. State of Mississippi*, 85 S.Ct. 564, 379 U.S. 443, rehearing denied.

The Supreme Court of Mississippi, in the above case, had failed to respond with any Opinion. Where the highest Court of the State delivers no Opinion, and it appears that the Judgment might have rested upon a non-federal ground, the United States Supreme Court will not take jurisdiction

to review the Judgment. *Stembridge v. State of Georgia*, 72 S.Ct. 834, 343 U.S. 541.

The attorney for the CITY recognized the ability of the attorney for the Class and consented to said appointment by the Court.

CONCLUSION

It is respectfully urged upon this Court that the CITY has created the very problem upon which it presently objects by failing to abide by the Orders of the Lower Court to notice the members of the Class so that they could be advised of the pending Class litigation. Now that the CITY has received adverse rulings against the CITY and in favor of the members of the Class to receive back their monies, the CITY has now undertaken to "protect" the Class, by now assuming to represent the interest of the Class by contesting the right of the attorney to a reasonable attorney's fee.

The CITY, to this very day, still has refused to abide by the Orders of the Lower Court to send out and notice the members of the Class to the effect that they are entitled to the return of the monies which was wrongfully exacted from the members of the Class by the CITY.

It is respectfully urged unto this Court that this Honorable Court should not accept jurisdiction of this issue and deny the Petition For Writ of Certiorari.

Respectfully submitted,

JOSEPH PARDO
Attorney for Respondents
Penthouse One, Roberts Bldg.
28 West Flagler Street
Miami, Florida 33130
Phone: (305) 371-0391

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Respondent's Reply to Petition For Writ of Certiorari and Appendix thereto has been served by mail upon BURNETT ROTH, Attorney for Petitioner, 420 Lincoln Road, Suite 329, Miami Beach, Florida 33139 and to JOSEPH A. WANICK, City Attorney, 1700 Convention Center Drive, Miami Beach, Fla., 33139, this 11th day of October, 1977.

Appendix

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

NO. 72-22041 (Judge Testa)

GENERAL JURISDICTION DIVISION

BERNARD JACOBS, d/b/a THE PARK APT. HOTEL, et al.,

Plaintiff(s),

vs.

THE CITY OF MIAMI BEACH,
a municipal corporation,

Defendant.

PLAINTIFFS' INTERROGATORIES TO DEFENDANT

TO: THE CITY OF MIAMI BEACH, CITY ATTORNEY
1130 Washington Avenue
Miami Beach, Florida 33139

Pursuant to Rule 1.340 Florida Rules of Civil Procedure, the plaintiffs BERNARD JACOBS, d/b/a THE PART APT. HOTEL, et al., by and through their undersigned attorney, propounds the Interrogatories attached hereto and made a part hereof to the Defendant, THE CITY OF MIAMI BEACH, to answer same under oath, in writing, within the time and manner prescribed by law.

JOSEPH PARDO
JOSEPH PARDO
Attorney for Plaintiffs
19 West Flagler St.
Miami, Florida 33130

I HEREBY CERTIFY that a true copy hereof, together with a copy of Interrogatories attached hereto and made a part hereof, was mailed to the addressee named herein this 20th day of March, 1973, together with the original Interrogatories, and a copy of Interrogatories was filed in Court.

JOSEPH PARDO
JOSEPH PARDO
OF COUNSEL

1. State your name, address and occupation and position with the CITY OF MIAMI BEACH.

A. Sheldon R. Zilbert, 1130 Washington Ave., Miami Beach, Fla. 33139, Attorney, Assistant City Attorney.

2. State the names, addresses, date and amounts paid by the customers who paid the "fire-line charges" to the CITY OF MIAMI BEACH, pursuant to Ordinance 1850, also known as Section 45-6(j). (Attach list hereto.)

A. Objection. The expense of obtaining this information would be prohibitive as well as oppressive. The City's computers are not capable of producing this information as requested.

3. Please state whether the CITY had the authority, in the event the water bill for the "fire-line charges" were not paid, to disconnect the water to said fire-line customers and to stop the flow of water through said water pipes.

A. Yes.

4. If the answer to the above is affirmative, please state the basis for the CITY'S authority.

A. Chapter 45 of the Code of the City of Miami Beach, Florida.

5. Please state whether the CITY, in addition to the regular water charges, sent by the City Water Department, had the authority to include the "fire-line charge" fee, with the additional demand that a 5% penalty per month, would be added if the fire-line customer did not pay within a specified period of time.

A. Yes.

6. If the answer to question 5 is affirmative, please state whether the CITY ever imposed, to any of its fire-line customers, the 5% penalty, per month, charge, pursuant to the above authority, and if imposed, state name, address and date and amount charged to said customers. (Attach list hereto if necessary.)

A. Yes, a 5% penalty was imposed. See Answer 2 above for remainder of this answer.

7. Please state whether Judge George E. Schulz, Circuit Judge, in the case of Mac-Ar-Mel, et al., as Plaintiffs, vs. The City of Miami Beach as Defendant, in Case Number 71-13460, declared Ordinance Number 1850, also known as §45-6(j) of the Miami Beach City Code, invalid, unreasonable, arbitrary, discriminatory, illegal and contrary to the laws of the State of Florida, and set said Ordinance aside.

A. This information is peculiarly within the knowledge of Joseph Pardo, Esquire.

8. Please state, if the above answer to number 7, is affirmative, the date that said Order was entered, by Judge Schulz, and whether the CITY took an Appeal from said Order.

A. Same as answer to question 7.

9. Please state whether the CITY paid any monies, or returned any monies to the fire-line customers, for "fire-line charges" since October, 1970.

A. No.

10. If the answer to number 9 is affirmative, state the name and address and amount paid or returned to the fire-line customer by the CITY. (Attach list hereto).

A. Not applicable.

11. Please state whether the CITY had a policy of refunding to the fire-line customers, the amounts paid by said customers for "fire-line charges" paid under protest by said customers.

A. No.

12. If answer to number 11 is affirmative, please state whether said policy was oral or in writing.

A. Not applicable.

13. If said policy was in writing, please state the date and form said policy was formulated and when it was enacted and who has a copy of said written policy. If the policy was oral, please state who formulated said policy and how said policy was transmitted to the department heads and was put into effect by the CITY.

A. Not applicable.

14. State whether the CITY had authority to place a lien against the real property, owned or operated by the customers who paid the fire-line charges or failed to pay the fire-line charges, in the event the customers failed or refused to pay the "fire-line charges" imposed by the CITY under Ordinance Number 1850, a/k/a §45-6(j).

A. Yes.

15. Please state, if the answer to number 14 is affirmative, where the CITY obtained said authority and whether said authority was oral or written and who imposed said authority upon said fire-line customer.

A. Chapter 45 of the Code of the City of Miami Beach, Florida.

16. Please state whether the CITY ever threatened any of the fire-line customers to impose a lien upon the fire-line customer's property in the event that he failed to pay the charges imposed by the CITY for the "fire-line charges" under Ordinance Number 1850, a/k/a §45-6(j).

A. No.

STATE OF FLORIDA)
SS.
COUNTY OF DADE)

BEFORE ME, the undersigned authority, personally appeared, Sheldon R. Zilbert, Assistant City Attorney, an authorized representative of the CITY OF MIAMI BEACH, FLORIDA, being first duly sworn, under oath, states

THAT the answers given to the Interrogatories are true and correct to the best of his knowledge and belief.

Dated this 9th day of April, 1973.

(illegible)

Notary Public, State of Florida at Large
NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JAN. 31, 1977
BONDED THRU GENERAL INSURANCE UNDERWRITERS

I HEREBY CERTIFY that a true and correct original and copy of the foregoing PLAINTIFF'S INTERROGATORIES TO DEFENDANT and ANSWERS TO INTERROGATORIES was mailed this 9th day of April, 1973 to: JOSEPH PARDO, ESQUIRE, Attorney for Plaintiffs, 19 West Flagler Street, Miami, Florida, 33130 and a copy of Interrogatories with Answers was filed in Court.

JOSEPH A. WANICK, City Attorney
Attorney for Defendant
1130 Washington Avenue
Miami Beach, Florida 33139
By _____
Sheldon R. Zilbert
Assistant City Attorney

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

NO. 72-22041 (Judge Testa)

BERNARD JACOBS, d/b/a THE PARK APARTMENT HOTEL, RUTH SEWALL, d/b/a NASSAU HOTEL, JOSEPH LIBBY, d/b/a CROYDON ARMS APT., IRVING SCHOENFELD, d/b/a LINCOLN PLAZA, STANLEY FRAIBEL, d/b/a ALAMO HOTEL, ISIDORE LEVINE, d/b/a LESLIE HOTEL, AL FISHMAN, d/b/a COMMODORE HOTEL & MORRIS STEINBERG, d/b/a MALABO APARTMENT, etc., on behalf of themselves and all others similarly situated,

Plaintiffs,

vs,

THE CITY OF MIAMI BEACH,
a municipal corporation,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS, MOTION FOR BETTER PARTICULARS AND MOTION TO STRIKE, AND DETERMINING CLASS AND ORDERING NOTICE TO CLASS

THIS MATTER coming on to be heard upon the Motion of the Defendant to Dismiss, Motion For Better Particulars, Motion To Strike and Motion for Determination of Class and Appointment of Attorney, and Notice To Class, and this Court having fully heard argument of counsel for the respective parties, it is upon due consideration:

ORDERED, ADJUDGED and DECREED as follows:

1. That this Court finds that the Plaintiffs have brought this action as a Class Action and that a joinder of all members of a Class would be impractical and that the same questions of law and fact are common through the entire Class and that claims for defenses of the representative parties are typical of the claims or defenses of the Class and that the representative parties are fairly and adequately represented in their interest in the Class.

2. That this Court has jurisdiction of the subject matter hereof and of the parties hereto.

3. That this Court designates the Plaintiff, BERNARD JACOBS, to be representative of the Class and the Class shall be all the customers of the CITY OF MIAMI BEACH, who paid the "fire-line charges" under Ordinance Number 1850 of the City of Miami Beach, Section 45-6(j), in the City Code of the City of Miami Beach, since October 1, 1970.

4. That this Court directs the CITY OF MIAMI BEACH to forthwith notice each of the customers who have paid "fire-line charges" to the CITY OF MIAMI BEACH, pursuant to Ordinance Number 1850, also known as Section 45-6(j), of the Code of the City of Miami Beach, in accordance with the form attached hereto and made a part hereof. That said customers shall have the right to object to being members of said Class by filing formal written notices of objection, with the Clerk of this Court, or may join the Class herein designated and appoint their own attorney or Plaintiffs' attorney to represent them. All customers, who paid the "fire-line charges", not objecting

in writing to being members of the Class, shall be considered as members of the Class.

5. That Defendant shall file its Answer to the Complaint within fifteen (15) days from the date hereof.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 9 day of March, 1973.

/s/ THOMAS A. TESTA
CIRCUIT JUDGE

[TITLE OMITTED]

NOTICE TO CUSTOMERS OF THE CITY OF MIAMI BEACH WHO HAVE PAID THE "FIRE-LINE CHARGES"

TO: ALL INDIVIDUALS, PROPRIETORSHIPS, PARTNERSHIPS, CORPORATIONS, AND ALL OTHER BUSINESS FIRMS WHO HAVE PAID FOR THE "FIRE-LINE CHARGES" SINCE OCTOBER 1, 1970 TO DATE, AS BILLED BY THE CITY OF MIAMI BEACH FOR "FIRE-LINE CHARGES" UNDER ORDINANCE NUMBER 1850, a/k/a SECTION 45-6 (j) OF THE CODE OF THE CITY OF MIAMI BEACH.

NOTICE IS HEREBY GIVEN that on or before twenty (20) days from the date hereof, that all customers of the CITY OF MIAMI BEACH, who have paid the "fire-line charges", since October 1, 1970 to date, shall be entitled to claim for a refund of said monies paid to the CITY OF MIAMI BEACH, and join in a Class Action filed herein, and in the event that written objection is not filed by said customer on or before twenty (20) days from the date hereof, then it will be determined that they approve the joining in the Class seeking the return of said "fire-line charges", paid by said customers to the CITY OF MIAMI BEACH.

IN THE EVENT that said customer desires to object to the return of said "fire-line charges" from the CITY OF MIAMI BEACH, then a written Notice shall be filed by said customer with the Clerk of the Circuit Court of the Eleventh Judicial Circuit, In And For Dade County, Florida, c/o Dade County Courthouse, Miami, Florida, on

or before twenty (20) days from the date hereof, and copy of said written Notice shall be sent to the office of the City Attorney, City of Miami Beach, 1130 Washington Avenue, Miami Beach, Florida 33139 and to Joseph Pardo, Attorney For Plaintiffs, Biscayne Building, 19 West Flagler Street, Miami, Florida 33130.

DATED the ____ day of March, 1973.

(TITLE OMITTED)

ORDER ON PLEADINGS AND SETTING CAUSE FOR TRIAL

THIS MATTER coming on to be heard upon Plaintiff's Motion To Strike Defendant's plea of laches, and the Defendant having raised, to this Court, that it would be a great hardship to send out the Notice to all of the parties, who had previously paid the fire-line tax, and the Defendant desiring to be relieved of said obligation and requirement to send out Notice to all of the parties who paid the fire-line tax, being the parties designated as the Class in this action, and the Defendant reserving the right to preserve for appeal the issue of whether this is an appropriate Class action, it is therefore upon consideration:

ORDERED, ADJUDGED and DECREED as follows:

1. The Defendant, THE CITY OF MIAMI BEACH, shall not be required to send written Notice to those persons who paid the fire-line taxes, and the Notice previously ordered is hereby cancelled and the CITY does herein waive all objections thereto.

2. That JOSEPH PARDO is hereby designated to act as attorney for the Class, hereinbefore designated, and shall represent the Class, except for those attorneys who represent other members of the Class who have filed their appearance in this cause.

3. That White Properties, Inc., a/k/a White Properties, N.V., a Netherlands Antilles Corporation, is hereby made a party plaintiff and joined as a member of the Class,

represented by Broad & Cassel, Attorneys at Law, and all future notices in this cause shall include notice to the above attorneys.

4. That Plaintiffs' Motion To Strike Defendant's Answer, as it pertains to the defense of laches, is hereby deferred until the time of trial.

5. That trial without jury is herein set before this Court, in Chambers, in the Dade County Courthouse, on August 28, 1973, at 1:30 P.M., and all parties are herein noticed to be prepared for trial.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 31 day of May, 1973.

s/THOMAS A. TESTA
CIRCUIT JUDGE

Copies sent to:
Joseph Pardo
JosephWanick, City Attorney
Broad & Cassel

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

GENERAL JURISDICTION

DIVISION

CASE NO. 72-22041 (Judge Testa)
Division No. 16

BERNARD JACOBS, et als.,

Plaintiffs,

vs.

CITY OF MIAMI BEACH, a municipal corporation,

Defendant.

MOTION TO CITE DEFENDANT FOR CONTEMPT

COMES NOW the Plaintiffs, by and through their undersigned attorney, and moves this Court to Cite the Defendant herein for Contempt of this Court's Order and shows unto this Court the following:

1. That this case has been pending since the year 1972.

2. That on March 9, 1973, this Court ordered and directed the Defendant to send Notice to all the "fire-line charge" class members, together with the Notice attached thereto.

3. That at the behest of the Defendant and the agreement, the Court deferred and permitted the Defendant to be relieved of said requirement to furnish the names, addresses, dates and amount paid by the customers who paid the "fire-line charges".

4. That on March 20, 1973, the Plaintiff asked the following interrogatory to the Defendant:

> "State the names, addresses, dates and amounts paid by the customers who paid the "fire-line charges to the City of Miami Beach pursuant to Ordinance 1850 also known as Section 45-6(j). (Attach list hereto)."

The Defendant answered:

> "A. Objection. The expenses of obtaining this information would be prohibitive as well as oppressive. The City's computers are not capable of producing this information as requested."

5. That the CITY, pursuant to Final Judgment of this Court, on April 8, 1974, required that the Defendant, CITY OF MIAMI BEACH, as follows:

> "This Court directs the City of Miami Beach forthwith to send out written notices to each of the customers who have paid "fire-line charges" to the City of Miami Beach, pursuant to Ordinance Number 1850, also known as 45-6(j) of the City of Miami Beach Code of their right to the return of the money they paid in accordance with the form approved by Order of this Court on March 12, 1973."

"16. The City of Miami Beach shall furnish to the attorneys for the Plaintiffs the name and addresses of the customers who have paid the "fire-line charges" to the City of Miami Beach pursuant to Ordinance No. 1850, also known as 45-6(j) of the Code of the City of Miami Beach showing the amounts paid by each of the customers."

6. That by the Opinion of Judge Pearson, from the Appeal taken by the CITY OF MIAMI BEACH from said Order, appearing at 315 So.2d 227, the District Court of Appeal affirmed the Order of this Court in its entirety.

7. That no appeal was taken to the Supreme Court of Florida from said Order.

8. That on November 12, 1975, this Court entered its Order on Plaintiffs' Motion For The Entry of Order On Mandate, and awarding a reasonable attorney's fee, wherein the Court again directed the Defendant to furnish the names, addresses and amounts of the customers who paid the "fire-line charge" and also to furnish the lists of said customers to the attorney for the Plaintiffs. On March 2, 1977, the Plaintiffs again requested and moved the Defendants to furnish the names, addresses and amounts of the sums paid by the Class who paid the "fire-line charges", and although this Court had orally originally indicated that it would give to the CITY OF MIAMI BEACH 48 hours from the date of the entry of the Order to furnish said information and records, the Court amended said Order and granted the CITY 15 days from the date of the entry of the Order, on March 24, 1977.

9. That to date, no information nor lists have been furnished to the Plaintiffs as required by the Order of this Court. The Court further indicated to the CITY OF MIAMI BEACH, and its attorney, that it could secure a supersedeas stay order from the Appellate Court, otherwise, this Court indicated that it would hold THE CITY OF MIAMI BEACH responsible for carrying out the Orders of this Court.

10. That the CITY OF MIAMI BEACH, in order to further delay this matter, has taken an Appeal directly to the Supreme Court of Florida and has again attempted to delay this matter by requesting the Supreme Court to grant an extension for filing a record and brief and other matters necessary to perfect said Appeal, although the Plaintiffs herein seriously doubt the jurisdiction of the Supreme Court to take jurisdiction in this matter, when the matter had previously been ordered and affirmed by the District Court of Appeal, and no appeal was taken from said Order, and on Mandate, again the CITY OF MIAMI BEACH was directed to furnish the material, and it was again appealed to the District Court of Appeal, and said Order was affirmed. The only matter pending on Appeal to the Supreme Court of Florida is the question of the issue of the attorney's fee fund, and has nothing to do with the furnishing of the names, addresses and amounts required by Order of this Court.

It is clear that questions settled on an earlier Appeal would no longer be considered open to question on a subsequent appeal. *Dade County Classroom Teachers Association v. Rubin*, 238 So.2d, 284, certiorari denied, 91 S.Ct. 569.

WHEREFORE, Plaintiffs pray that this Court will cite the Defendant for contempt for its failure to abide by the Orders of this Court, there being no supersedeas bond either applied for nor provided to stay the effect of the prior judgments ordering the furnishing of the names, addresses and amounts.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Motion To Cite Defendant For Contempt was mailed to JOSEPH A. WANICK, City Attorney, City of Miami Beach, 1130 Washington Avenue, Miami Beach, Florida 33139, this 20th day of April, 1977.

JOSEPH PARDO
Attorney for Plaintiffs
Penthouse One, Roberts Building
28 West Flagler Street
Miami, Florida 33130
Phone: 371-0391

[TITLE OMITTED]

MOTION TO CITE DEFENDANT, CITY OF MIAMI BEACH FOR CONTEMPT FOR FAILURE TO SEND OUT NOTICES OR FURNISH NAMES; MOTION TO REQUIRE DEFENDANT, CITY OF MIAMI BEACH TO PLACE "FIRE-LINE" FUND IN THE REGISTRY OF THE COURT

COMES NOW THE Plaintiffs, by and through their undersigned attorney, and moves this Court to Cite the Defendant, CITY OF MIAMI BEACH, for Contempt in deliberately failing to send out Notices to those who paid the "fire-line" charges, and furnish a complete list of the names and addresses of those who paid the "fire-line" charges and shows unto this Court the following:

1. That by the Final Order of this Court, dated April 8, 1974, the CITY OF MIAMI BEACH was directed (in Paragraph 16) to furnish to the attorneys for the Plaintiffs, the names, and addresses of the customers who have paid "fire-line" charges to the CITY OF MIAMI BEACH.

2. That the CITY OF MIAMI BEACH was directed by this Court in that same Final Order to send out written notice to each of the customers who have paid the "fire-line" charges to the City, informing each of his/her right to the return of the monies they paid. This Court approved the notice form on March 12, 1973.

3. That the CITY OF MIAMI BEACH was directed to return to the members of the Class the monies paid by the members of the Class, which produced the "fire-line charge fund".

4. That this Court, in its Final Order on this cause found that "The City's position is untenable, to hold otherwise would be an open invitation for governing bodies to adopt fiscal bills of dubeous validity and extract the tariff under duress of forfeiture and penalties while engaging in protracted litigation and then, when finally declared invalid, extend an apology and refuse to rebate."

"This Court can not lend any encouragement to this course of conduct which is a throw back to the dogma that 'the King can do no wrong'".

5. The CITY OF MIAMI BEACH, for the sole purpose of delay, has taken numerous appeals both to the District Court of Appeal of Florida, Third District, and to the Florida Supreme Court. In each case, as to the issues presented in this Motion, namely, the serving of notice, the furnishing of names and addresses to Plaintiff's attorney, and the very repayment of the "fire-line" charge, This Court has been affirmed.

6. That as to the issues presented in this Motion, not a single one is pending on appeal.

7. That the CITY OF MIAMI BEACH has failed to furnish to the attorneys for the Plaintiffs the names and addresses of the custormer who have paid "fire-line" charges to the CITY OF MIAMI BEACH.

8. That the CITY OF MIAMI BEACH has failed to send out written notice to each of the customers who have paid the "fire-line" charges to the City, informing each of his/her right to the return of the monies they paid.

9. That, to date, the CITY OF MIAMI BEACH has

failed to return to the members of the Class the monies paid by the members of the Class.

10. That this Plaintiff is without other remedy than to move that this Court enforce its earlier Orders and protect this Plaintiff by taking charge of the monies involved.

WHEREFORE, Plaintiffs pray that this Court will cite the Defendant for contempt for its failures to abide by the Orders of this Court, and require the monies collected by the CITY OF MIAMI BEACH as a "fire-line" charge to be placed in the regustry of this Court, there being no supersedeas bond either applied for nor provided to stay the effect of the prior judgments of this Court.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Motion to Cite Defendant for Contempt for Failure to send out Notices or Furnish Names; and Motion to Require Defendant to place "fire-line" fund in the registry of the Court was mailed to JOSEPH A. WANICK, City Attorney, City of Miami Beach, 1130 Washington Avenue, Miami Beach, Florida, 33139 this 17 day of June 1977.

/S/ Joseph Pardo
JOSEPH PARDO
Attorney for Plaintiffs
Penthouse One, Roberts Building
28 West Flagler Street
Miami, Florida 33130
Phone: 371-0391

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

GENERAL JURISDICTION DIVISION

CASE NO. 72-22041
(Judge Testa)

BERNARD JACOBS, d/b/a THE PARK APARTMENT HOTEL, RUTH SEWALL, d/b/a NASSAU HOTEL, JOSEPH LIBBY, d/b/a CROYDON ARMS ARPT., IRVING SCHOENFELD, d/b/a ALAMO HOTEL, ISIDORE LEVINE, d/b/a LESLIE HOTEL, AL FISHMAN, d/b/a COMMODORE HOTEL, & MORRIS STEINBERG, d/b/a MALABO APARTMENT, etc., on behalf of themselves and all others similarly situated.

Plaintiffs,

vs

THE CITY OF MIAMI BEACH,
a municipal corporation,

Defendant.

AMENDED FINAL MEMORANDUM DECISION

THIS MATTER coming on to be heard before this Court, based upon the Complaint filed by the Plaintiffs, in behalf of themselves and all those similarly situated, for the return of taxes paid by the Plaintiffs, in connection with a "fire-line" charge, made pursuant to an ordinance enacted by the CITY OF MIAMI BEACH, the Defendant filed its Motion To Dismiss and Motion to Strike, which were denied by this Court, and the Defendant generally denied

the allegations of the complaint, and this Court having fully heard the testimony of the parties hereto, and having received, in evidence, the exhibits filed, and having heard extensive argument by the respective parties and their counsel, Final Memorandum Decision and Motion for Rehearing, this Court finds as follows:

1. By Order of March 9, 1973, this Court determined the Class and ordered Notice to the Class as set forth therein, to wit:

> "The Class shall be all of the customers of the City of Miami Beach, who paid the "fire-line charges" under ordinance number 1850 of the City of Miami Beach, §45-6(j) of the City Code of the City of Miami Beach, since October 1, 1970."

2. The Petition For Rehearing, filed by the CITY OF MIAMI BEACH, on March 20, 1973, was denied by Order dated April 26, 1973.

3. By Order of May 31, 1973, the Plaintiffs and the Defendant appeared before the Court and the defendant requested the Court to relieve the Defendant of sending out Notices to all of the parties who had paid the "Fire-line tax" and the Defendant waived all previous requirements of Notice and consented to the appointment of JOSEPH PARDO as attorney for those in the Class not represented by independent counsel, and this matter proceeded to be noticed for trial.

4. The Defendant, THE CITY OF MIAMI BEACH, has admitted and this Court finds that in addition to the regular water charges sent by the City Water Department, that there was included with the "fire-line" charge

fee, an additional demand that a five percent (5%) penalty per month was added if the "fire-line" customer did not pay within the specified period of time.

5. THE CITY OF MIAMI BEACH imposed a five percent (5%) penalty per month charge pursuant to authority granted under the ordinance.

6. This Court finds, from the evidence presented, that the Honorable George E. Schulz, Circuit Judge, in the case of *Mac-Ar-Mel, Inc., etc., et al., as Plaintiffs vs City of Miami Beach,* as Defendant, in Case Number 71-13460, In The Circuit Court of the Eleventh Judicial Circuit, declared Ordinance Number 1850 also known as 45-6(j) of the City of Miami Beach Code, unreasonable, arbitrary, discriminatory, illegal and contrary to the laws of the State of Florida, and set said Ordinance aside. It is singular that the City of Miami Beach did not see fit to appeal this decision.

This Court concurs in the Opinion of Judge Schulz and independently finds, from the evidence presented, that the Ordinance Number 1850, also known as §45-6(j) of the City of Miami Beach Code, is invalid, unreasonable, arbitrary, discriminatory, illegal and contrary to the laws of the State of Florida, and does herein also set said Ordinance aside, and of no force and effect.

7. THE CITY OF MIAMI BEACH has not returned any monies paid to it under the "fire-line" charges paid by the City of Miami Beach customers since October of 1970 to the present date.

8. THE CITY OF MIAMI BEACH had no policy of refunding to "fire-line" customers, the amounts paid by said customers for "fire-line" charges paid under protest by said customers.

9. THE CITY OF MIAMI had authority to palce a lien against the real property owned or operated by the customers who pay the "fire-line" charges or who fail to pay the "fire-line" charges in the event the customers failed or refused to pay the "fire-line" charges imposed by the City of Miami Beach under Ordinance Number 1850 also known as Sec. 45-6(j).

10. This Court further finds that the issue of the validity of Ordinance Number 1850 also known as Sec 45-6(j) of the City of Miami Beach Code having been declared in a previous suit, supra, to be invalid, unreasonable, arbritrary and discriminatory, illegal and contrary to the laws of the State of Florida. The parties are estopped from litigating in this suit points and questions common to both causes of action and which were actually adjudicated in the prior litigation, and is further found to be res judicata. *Golden View Condominium, Inc. vs City of Hallandale,* 4th Dist. 1973, 279 So.2d 323, *City of Miami Beach vs Dor Rich Inc.,* 289 So.2d 52.

11. This Court further finds from the testimony presented the "fire-line" customers were paid under protest and are deemed by this Court to have been paid involuntarily.

12. This Court finds that there was actual and threatened exercise of power possessed by the City of Miami Beach and believed to be possessed by the party exacting or receiving the "fire-line" charges over the property of the Plaintiff's herein making the "fire-line" payments.

The principals governing recovery of payments made are applicable to the payments made in discharge of tax assessments. The modern tendency is towards a greater liberality in recognizing the implied duress under which

payment of a tax is almost always made, even when no seizure of the taxpayers goods are imminent if he is put at a serious disadvantage in the assertion of his legal rights in defending proceedings brought to collect the tax. Justice would require that he be at liberty to avoid this disadvantage by paying promptly and bringing suit to recover the amounts paid. In the case of *New Smyrna Inlet District vs. Esch, et al,* (Fla. 1931), 137 So. 1, the Supreme Court of Florida held that where the levy of an illegal tax may become a cloud upon title to real estate, the payment of the tax to avoid the cloud or to avoid the imposition of substantial burdens upon property rights of the owner, is not a voluntary payment. Further, in *St. Johns Electric Company vs. The City of St Augustine,* (Fla. 1921), 88 So. 387, the Supreme Court held that an ordinance proscribing a penalty by a fine for failure to pay the license taxes cannot fairly be said that the payment was voluntary, in the sense that its recovery is forbidden by a rule formulated by the Court even though the ordinance under which it was paid has been adjudicated to be invalid. Taxes are not voluntarily paid within the rule that precludes a recovery, where the failure to pay is a penal offense and payment is made to avoid proceedings to enforce the penalty. In the *City of Miami Beach vs Tenny,* (Fla., App.), 7 So.2d 136, the Court held that an action of the City in attempting to levy a special assessment against certain property owners, resulted in bringing those certain property owners into a stated "class" and the suit to enjoin collection to require the return of money which had been collected, for a tax not lawfully imposed, was proper. In the case of *Tenny vs. City of Miami Beach,* (Fla. App.), 11 So. 2d. 188, the Court reaffirmed the community of interest by the Plaintiffs, who paid an illegal tax and where their interest is one and the same.

In a recent decision the Second District Court of Appeals held that a citizen group may sue for and on behalf of some or all.

The opinion further expounded on "the avoidance of multiply action doctrine and stated that there were other considerations such as deterring economic influences flowing from the great expense of litigation and the precedential value of a prior decided case on a given point" The Court also aluded to the broadened language of the reworded "access to courts" provision in the 1968 version of Florida's Constitution. (*Save Sand Key Inc. vs. U.S. Steel Corp.*, 281 So.2d, 572 (2nd Fla. App., 1973).

1. This Court further finds and holds, as a matter of law, that the payment of the "fire-line" taxes to avoid the possibility of incurring a penalty which would accrue continually during a period of non-payment, is deemed to be made under duress. *Atchison T.N.S.F.R: Company vs. O'Connor,* 223 U.S. 280; *North Miami vs. Seaway Corp.*, (Fla.) 9 So. 2d 705.

14. The City's position is untenable, to hold otherwise would be an open invitation for governing bodies to adopt fiscal bills of dubeous validity and extract the tariff under duress of forfeiture and penalties while engaging in protracted litigation and then, when finally declared invalid, extend an apology and refuse to rebate.

This Court can not lend any encouragement to this course of conduct which is a throw back to the dogma that "the King can do no wrong". One-eyed thinking of this kind is not in touch with present day realities.

Equitable principals dictate that the best interest of the

taxpayer will be served by the enactment of responsible tax measures and when found to be unlawful, then the City must respond and remit, otherwise it would be unconscionable for the City of be thusly enriched.

15. This Court directs that the CITY OF MIAMI BEACH forthwith send out written notice to each of the customers who have paid "fire-line" charges to the City of Miami Beach, pursuant to Ordinance No. 1850, also known as §45-6(j) of the City of Miami Beach Code, of their right to the return of the monies they paid in accordance with the form approved by Order of this Court on March 12, 1973.

16. The CITY OF MIAMI BEACH shall furnish to the attorneys for the plaintiffs, the names and addresses of the customers who have paid "fire-line" charges to the CITY OF MIAMI BEACH, pursuant to Ordinance Number 1850, also known as §45-6(j) of the Code of Miami Beach, showing the amount paid by each of the customers.

17. This Court retains jurisdiction over the subject of attorneys fees and the City will be afforded an opportunity to challenge representation by counsel.

18. This Court does herein assess the costs of these proceedings against the Defendant, CITY OF MIAMI BEACH, to be assessed by subsequent Order of this Court.

19. The Court holds that the issue of laches raised by the City is without foundation and dismisses same.

20. This Court retains jurisdiction for the purpose of enforcing the terms and conditions of this Final Judgment.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida, this 8 day of April, 1974.

THOMAS A. TESTA
CIRCUIT JUDGE

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1975

CASE NO. 74-667

CITY OF MIAMI BEACH, a municipal corporation,
Appellant,

vs.

BERNARD JACOBS, et al.,
Appellees.

Opinion filed July 29, 1975.

An Appeal from the Circuit Court for Dade County, Thomas A. Testa, Judge.

Joseph A. Wanick, City Attorney, for appellant.

Broad & Cassel; Joseph Pardo, for appellees.

Before BARKDULL, C.J., and PEARSON and HENRY, JJ

REVISED OPINION

PEARSON, Judge.

The City of Miami Beach appeals a final judgment in a class action suit[1] which ordered the repayment to the class of money paid by the members of the class to the City under an ordinance which imposed [copy illegible] and charges to be known as "fire line charges." The ordinance had been declared unconstitutional in a prior suit in the same court by a different judge. The present trial judge concurred in that decision and found (1) that the plaintiffs represented a proper class, and (2) that because the invalid ordinance carried penalties for nonpayment of the periodic charges, the payments made of the charges must be considered as "payment under protest."

The City presents three points, as follows: (1) it was error to find this to be a proper class suit: (2) it was error to find the ordinance invalid; and (3) the trial judge erred in failing to find for the City upon its defense of laches. We hold that no reversible error is shown.

The finding of the trial judge that this was a proper class suit is supported by the holdings in the following cases: *City of Miami Beach v. Tenney*, 150 Fla. 241, 7 So.2d 136 (1942); *Watnick v. Florida Commercial Banks, Inc.*, Fla.App. 1973, 275 So.2d 278; *Port Royal, Inc. v. Conboy*, Fla.App. 1963, 154 So.2d 734.

In the City's argument directed to the trial court's finding that the ordinance is invalid, it is urged that the trial

[1] "The class shall be all of the customers of the City of Miami Beach Beach, who paid the 'fire-line charges' under ordinance number 1850 of the City of Miami Beach, § 45-6(j) of the City Code of the City of Miami Beach, since October 1, 1970."

judge acted entirely upon the prior determination of another judge in another case in the same court. This argument is refuted by the specific findings contained in the judgment. The judge pointed out:

> "This Court concurs in the Opinion of Judge Schulz and independently finds, from the evidence presented, that the Ordinance Number 1850, also known as §45-6(j) of the City of Miami Beach Code, is invalid, unreasonable, arbitrary, discriminatory, illegal and contrary to the laws of the State of Florida, and does herein also set said Ordinance aside, and of no force and effect."

There remains on this point only the determination of whether there was sufficient competent evidence to support the finding. We find that the ordinance is invalid on its face and that, therefore, there was no need for special evidence on this issue. We are here dealing with an ordinance proposing to levy upon certain properties a monthly charge if the properties' fire lines exceeded stated sizes. This charge was not a charge for use but simply for the right to be connected into the City water system. The ordinance makes no attempt to earmark the funds for the purpose of financing an expansion of the system or for increased costs of any kind. It establishes a bare charge without relation to use or a legally collectable connection fee. See *City of Dunedin v. Contractors & Builders Ass'n.*, Fla.App. 1975, 312 So.2d 763. See also cases cited at 84 C.J.S. Taxation § 22b (1954) and 31 Fla. Jur. Taxation § 62 et seq.

It is true, as the City urges, that a trial judge is not bound by another trial judge's declaration of unconstitutionality of an ordinance in the judgment of another case. But in view of the above-quoted finding of the present

trial judge, which was made independently and which is supported in the record, we will affirm.

The City's contention, under its third point, that it was entitled to a judgment as a matter of law because of the laches of the plaintiffs is not supportable on this record. See *Tampa Water Works Co. v. Wood*, 104 Fla. 306, 139 So. 800 (1932).

Affirmed.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

GENERAL JURISDICTION DIVISION

NO. 72-22041 (Judge Testa)

BERNARD JACOBS, et als.,

Plaintiff,

vs.

CITY OF MIAMI BEACH, a municipal corporation,

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR THE ENTRY OF ORDER ON MANDATE AND AWARDING A REASONABLE ATTORNEY'S FEE

THIS MATTER coming on to be heard after due notice, upon the Plaintiff's Motion To The Entry Of An Order Pursuant To the Mandate of the District Court of Appeal, Third District, revised Opinion, dated July 29, 1975 (315 So.2d 227), and for the determination of a reasonable attorney's fee to be paid to JOSEPH PARDO, attorney, representing the Class who paid the "fire-line charges", and this Court having heard the testimony of the attorney and the expert testimony to support said Motion and determination as to a reasonable attorney's fee, and having considered the various elements necessary in computing a reasonable attorney's fee as set forth in 32 F.S.A. Code of Professional Responsibility, Canon 2 (D.R.2-106 (b)) and this Court being personally familiar with the work performed by Joseph Pardo, as attorney for the Class in this cause, it is upon due consideration:

ORDERED, ADJUDGED and DECREED that the Defendant, CITY OF MIAMI BEACH, shall pay to JOSEPH PARDO, as attorney representing the Class who paid the "fire-line charges" to the CITY OF MIAMI BEACH, as a reasonable attorney's fee for said representation, an amount equal to THIRTY-SEVEN PERCENT (37%) of the sum of monies collected by the CITY OF MIAMI BEACH from the Class who paid the "fire-line charges", which sum shall include interest at SIX PERCENT (6%) per annum from the date of the entry of this Court's Amended Final Decision, dated April 8, 1974, until paid, pursuant to F.S.A. §55.03, and said sums shall be paid forthwith, and it is further

ORDERED, ADJUDGED and DECREED that the CITY OF MIAMI BEACH shall refund to each of the members of the Class who paid to the [copy illegible] paid by said members of the Class, together with interest, as aforesaid, less the amount of THIRTY-SEVEN PERCENT (37%) hereinbefore awarded to JOSEPH PARDO, as a reasonable attorney's fee, for representing said Class, and said sums shall be paid forthwith, and it is further:

ORDERED, ADJUDGED and DECREED that the CITY OF MIAMI BEACH shall, within 30 days from the date hereof, furnish to JOSEPH PARDO, as attorney for the Class, the names, addresses and amounts paid by the customers of the Class who paid the "fire-line charges" to the CITY OF MIAMI BEACH, (see paragraph 16 of this Court's Final Decision, dated April 8, 1974), and the CITY OF MIAMI BEACH shall permit JOSEPH PARDO, or his authorized representative, to inspect and verify and copy the names addresses and amounts of the figures and information furnished by the CITY OF MIAMI BEACH, and it is further:

ORDERED, ADJUDGED and DECREED that this Court retains jurisdiction for the purpose of enforcing the terms and conditions of this Order and for the entry of such other and further Orders as may be necessary to implement the enforcement of this Court's Decree.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 24 day of November, 1975.

THOMAS A. TESTA
CIRCUIT COURT

Proposed Order mailed 11/14/75 to: Broad & Cassel & Joseph A. Wanick
Conformed Copies To:
Joseph Pardo, Esq.
Joseph A. Wanick, Esq.
Broad & Cassel, Esqs.

[TITLE OMITTED]

MOTION TO REQUIRE DEFENDANT, CITY OF MIAMI BEACH TO PLACE "FIRE-LINE" FUND IN THE REGISTRY OF THE COURT AND OTHER RELIEF

COMES NOW the Plaintiffs, by and through their undersigned attorney, and moves this Court To Require the CITY OF MIAMI BEACH to Place the "Fire-Line Charge" Fund Into The Registry of This Court, and further require the CITY OF MIAMI BEACH to furnish the names, addresses and amounts paid by the members of the Class who paid the "fire-line charges" and shows unto this Court the following:

1. That this matter has been in litigation since 1972.

2. That the CITY has continuously failed to furnish the names, addresses and amounts paid by the members of the Class notwithstanding the request for admissions and the answers to interrogatories previously filed.

3. That the CITY OF MIAMI BEACH, by the Final Order of this Court, of April 8, 1974, was directed by paragraph 16 to furnish the names, addresses and amounts paid by the members of the Class to the attorney for the Class, Joseph Pardo. To date, none of this information has been furnished to Joseph Pardo.

4. That the CITY was directed to refund to the members of the Class the monies paid by the members of the Class, which produced the "fire-line charge" fund.

5. That by previous Order of this Court, of April 8,

1974, the Orders of this Court has been affirmed by the 3d. D.C.A., Opinion filed July 29, 1975, as it appears at 315 So.2d 227, which affirmed the Orders of this Court as above set forth.

6. That to date, the CITY has failed to refund to any of the members of the Class any of the monies paid, nor has the CITY placed said funds into the registry of this Court for the benefit of the members of the Class, nor has the CITY furnished names and addresses and amounts paid by the members of the Class, nor furnished to the attorney for the Class, Joseph Pardo, the information so directed.

7. That this further delay will be of great detriment and harm to the members of the Class in that time expended by the CITY in the continuous delaying tactics will make it more difficult to locate the members of the Class or to contact the members of the Class when this matter has been completely resolved. That none of the matters presently pending involve any of the issues and requests herein made and would not in any way delay or hinder the rights of the CITY in its present pending matters, but will be of detriment and harm to the members of the Class if not granted.

WHEREFORE, the Plaintiff prays that this Court, in Equity, will grant the foregoing Motion and require the CITY OF MIAMI BEACH to place the "fire-line charge" fund into the registry of this Court for the protection and benefit of the members of the Class already determined to be entitled to the return of said monies from the CITY and who have already paid said "fire-line charge" and to further require the CITY OF MIAMI BEACH, pursuant to the previous Orders of this Court, affirmed by the Appellate Court, to forthwith furnish the names, addresses and

amounts paid by the members of the Class who paid the "fire-line charges".

I HEREBY CERTIFY that a true and correct copy of the above Motion To Require Defendant, City of Miami Beach, To Place The "Fire-Line" Fund In The Registry of the Court And Other Relief was mailed to JOSEPH A. WANICK, City Attorney, City of Miami Beach, 1130 Washington Avenue, Miami, Beach, Florida 33139, and to BROAD & CASSELL, 1108 Kane Concourse, Bay Harbor Islands, Florida 33154 this 2nd day of March, 1977.

/s/Joseph Pardo
JOSEPH PARDO
Attorney for Plaintiff, Class
Penthouse One, Roberts Building
28 West Flagler Street
Miami, Florida 33130
Phone: 371-0391

[TITLE OMITTED]

ORDER REQUIRING PRODUCTION

THIS MATTER coming on to be heard upon Plaintiffs' Motion To Require The Defendant, CITY OF MIAMI BEACH, to Produce the Names, Addresses and Amounts Paid by the Members of the Class Who Paid the Fire-Line Charges, And to Have The "FIRE-LINE FUND" Placed in the Registry of this Court, and this Court having previously directed the production of the names, addresses and amounts paid by the members of the Class, of the "Fire-Line Charges" and said Orders having previously been appealed and affirmed by the District Court of Appeal, Third District, and it appearing to this Court that to date, none of the names, addresses and amounts paid by the members of the Class have been furnished to the attorney for the Class, Joseph Pardo, as previously directed, it is upon due consideration:

ORDERED and ADJUDGED that the Defendant, CITY OF MIAMI BEACH, shall furnish to Joseph Pardo, Attorney for the Class, the names, addresses and amounts paid by the Members of the Class who paid the "Fire-Line Charges", within fifteen (15) days from the date of the entry of this Order, and shall permit the attorney for the class, Joseph Pardo, or his duly designated representative to inspect and verify the records of the CITY OF MIAMI BEACH the information furnished, and it is further:

ORDERED and ADJUDGED that the CITY OF MIAMI BEACH shall send out to all of those who paid the 'Fire-Line Charges" being members of the Class, in accordance with the attached Notice, previously approved by this Court, by previous Order, which notice shall be sent out at

the same time that the CITY OF MIAMI BEACH sends out its regular monthy water bills notice, and it is further:

ORDERED AND ADJUDGED that this Court reserves ruling on the Plaintiffs Motion To Require THE CITY OF MIAMI BEACH to place the "Fire-Line Fund" in the registry of the Court.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 24 day of March, 1977.

THOMAS A. TESTA
CIRCUIT JUDGE

Conformed Copies To:
Joseph Wanick, City Attorney, City of Miami Beach
Broad & Cassell, Esqs.
Joseph Pardo, Esq.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

NO. 72-22041 (Judge Testa)

Division No. 16

GENERAL JURISDICTION DIVISION

BERNARD JACOBS, d/b/a THE PARK APARTMENT HOTEL, RUTH SEWALL, d/b/a NASSAU HOTEL, JOSEPH LIBBY, d/b/a CROYDON ARMS APT., IRVING SCHOENFELD, d/b/a LINCOLN PLAZA, STANLEY FRAIBEL, d/b/a ALAMO HOTEL, ISIDORE LEVINE, d/b/a LESLIE HOTEL, AL FISHMAN, d/b/a COMMODORE HOTEL & MORRIS STEINBERG, d/b/a MALABO APARTMENT, etc., on behalf of themselves and all others similarly situated.

Plaintiffs,

vs,

THE CITY OF MIAMI BEACH,
a municipal corporation,

Defendant.

NOTICE TO CUSTOMERS OF THE CITY OF MIAMI BEACH WHO HAVE PAID THE "FIRE-LINE CHARGES"

TO: ALL INDIVIDUALS, PROPRIETORSHIPS, PARTNERSHIPS, CORPORATIONS, AND ALL OTHER BUSINESS FIRMS WHO HAVE PAID FOR THE "FIRE-LINE CHARGES" SINCE OCTOBER 1, 1970 TO DATE, AS BILLED BY THE CITY OF MIAMI BEACH FOR "FIRE-LINE CHARGES" UNDER ORDINANCE NUMBER 1850, a/k/a SECTION 45-6 (j) OF THE CODE OF THE CITY OF MIAMI BEACH.

NOTICE IS HEREBY GIVEN that on or before twenty (20) days from the date hereof, that all customers of the CITY OF MIAMI BEACH, who have paid the "fire-line charges", since October 1, 1970 to date, shall be entitled to claim for a refund of said monies paid to the CITY OF MIAMI BEACH, and join in a Class Action filed herein, and in the event that written objection is not filed by said customer on or before twenty (20) days from the date hereof, then it will be determined that they approve the joining in the Class seeking the return of said "fire-line charges", paid by said customers to the CITY OF MIAMI BEACH.

IN THE EVENT that said customer desires to object to the return of said "fire-line charges" from the CITY OF MIAMI BEACH, then a written Notice shall be filed by said customer with the Clerk of the Circuit Court of the Eleventh Judicial Circuit, In And For Dade County, Florida, c/o Dade County, Courthouse, Miami, Florida, on or before twenty (20) days from the date hereof, and copy of said written Notice shall be sent to the office of the City Attorney, City of Miami Beach, 1130 Washington Avenue, Miami Beach, Florida 33139 and to Joseph Pardo, Attorney for Plaintiffs, Penthouse One, Roberts Building, 28 West Flagler Street, Miami, Florida 33130.

DATED the ____ day of March, 1977.

IN THE SUPREME COURT OF FLORIDA

FRIDAY, JULY 29, 1977

CASE NO. 50,973

CITY OF MIAMI BEACH, ETC.,
Petitioner,

vs.

BERNARD JACOBS, ET AL.,
Respondents.

Petitioner's Petition for Rehearing is hereby denied, and it is further

ORDERED that the Petition for Stay of Mandate filed by petitioner is hereby granted and proceedings in this Court and in the District Court of Appeal, Third District, and in the Circuit Court in and for Dade County, Florida, are hereby stayed to and including August 29, 1977 to allow petitioner to seek review in the Supreme Court of the United States and obtain any further stay from that Court.

A True Copy

TEST:

/s/SID J. WHITE
Sid J. White
Clerk Supreme Court.

y
CC: Clerk, DCA 3
Clerk Circuit Court
Hon. Thomas A. Testa, Judge
Hon. Joseph A. Wanick
Hon. Joseph Pardo
Broad & Cassel

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

September 9, 1977

Burnett Roth, Esquire
420 Lincoln Road
Suite 329
Miami Beach, Florida 33139

Re: City of Miami Beach v. Bernard Jacobs, etc., et al., A-229 (77-363)

Dear Mr. Roth:

Your application for stay in the above-entitled case has been presented to Mr. Justice Powell, who has endorsed thereon the following:

"Denied
L.F.P.
9/8/77"

Very truly yours,

MICHAEL RODAK, JR., Clerk

By

Peter K. Beck
Assistant Clerk

th

cc: Joseph Pardo, Esquire
Penthouse One
Roberts Building
28 West Flagler Street
Miami, Florida 33130